

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PAUL H. HORTON

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Appeal No. 95-4852  
Application 08/224,090<sup>1</sup>

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ON BRIEF

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Before COHEN, STAAB and McQUADE, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 20 through 22.<sup>2</sup> Claims 2 through 6, 8 through 12 and 15 through 19 stand allowed. Claim 23 has been indicated as containing allowable subject matter but stands objected to as depending from a

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<sup>1</sup> Application for patent filed April 5, 1994. According to appellant, the application is a continuation of Application 08/017,549, filed February 16, 1993, now abandoned.

<sup>2</sup> Claim 20 has been amended subsequent to final rejection.

rejected base claim. Claim 24, the only other claim pending in the application, stand withdrawn from consideration pursuant to 37 CFR 1.142(b) as being directed to a non-elected invention.

The subject matter on appeal relates to a "machine for conditioning and dispensing loose fill insulation material" (specification, page 1). Claim 20 is illustrative and reads as follows:

20. A machine for conditioning and dispensing loose fill insulation material, comprising:

a hopper for receiving unconditioned insulation material;

a conditioning apparatus for receiving the unconditioned insulation material from the hopper and for conditioning the insulation material;

a dispensing assembly for receiving the conditioned insulation material from the conditioning apparatus and for dispensing the conditioned insulation material to an applicator; and

wherein the conditioning apparatus comprises:

a housing for containing the insulation material, the housing having a first end, a second end, a first side, a second side, a top continuous with the hopper and defining an entry opening, and a bottom continuous with the dispensing assembly and having a length defined by the distance between the first and second ends;

a movable partition in the bottom of the housing adapted to form an adjustable exit opening whereby the flow of conditioned insulation material from the housing into the dispensing assembly is controlled, the exit opening having a length less than the length of the bottom of the housing;

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first means in the housing for dispensing the insulation material and conveying the insulation material in one direction in the housing toward the exit opening; and

second means in the housing located above the first means for dispensing the insulation material and conveying the insulation material in a direction opposite to said one direction in the housing.

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Morris	1,413,345	Apr. 18, 1922
Woten	3,529,870	Sept. 22, 1970

The claims on appeal stand rejected as follows:

a) claims 20 and 22 under 35 U.S.C. § 102(b) as being anticipated by Woten; and

b) claim 21 under 35 U.S.C. § 103 as being unpatentable over Woten in view of Morris.<sup>3</sup>

Reference is made to the appellant's brief (Paper No. 13) and to the examiner's answer (Paper No. 14) for the respective positions of the appellant and the examiner with regard to the propriety of these rejections.

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<sup>3</sup> The examiner has withdrawn the 35 U.S.C. § 112, second paragraph, rejection of claims 20 through 22 which was set forth in the final rejection (see the advisory action dated July 1, 1994, Paper No. 11)

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As for the first rejection, anticipation is established when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026(1984).

Claim 20 recites a machine for conditioning and dispensing loose fill insulation material comprising, inter alia, "first means in the housing for dispersing the insulation material and conveying the insulation material in one direction in the housing toward the exit opening". The sole issue raised in this appeal by the appellant with regard to the examiner's anticipation rejection is whether Woten discloses structure which performs the foregoing dispersing and conveying function. The examiner contends that the auger 18 in Woten's insulating machine meets

this limitation (see page 4 in the answer). The appellant, tacitly acknowledging that Woten's auger 18 conveys insulation material in one direction toward an exit opening, argues that

Wooten [sic, Woten] recognizes that at least in some operating conditions, a screw auger tends to compact the material, rather than dispersing the material as required for the first means. This is set forth in detail in column 1 at lines 46-66 of Wooten [sic]. Thus, the "means" disclosed in Wooten [sic] does not perform the identical function called for with respect to the "first means" in claim 20 [brief, page 4, emphasis in the original].

Woten does in fact discuss the problem of auger-induced compaction in insulating machines at column 1, lines 46 through 66. Contrary to the appellant's implication, however, the particular insulating machine disclosed by Woten is designed to eliminate this problem. To this end, the Woten machine includes a number of rotating components such as a jogger 28, a circulator 22, the aforementioned auger 18 and a granulator 7 which keep loose fill insulation material in a state of constant motion and agitation to separate or "disperse"<sup>4</sup> the individual particles

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<sup>4</sup> Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1977) defines term "disperse" as meaning "to cause to break up".

thereof which may have become somewhat compressed during packaging (see column 1, lines 26 through 45; and column 4, line 31 et seq.). Consequently, "the separate particles, or nodules, of the material being fed will be positively separated during the feeding operation" (column 2, lines 19 through 21). Indeed, Woten expressly emphasizes that "at all times the material is kept in movement and there is no opportunity for compaction" (column 4, lines 65 and 66). The auger 18 also functions to convey the insulation material in one direction toward an outlet or exit opening 15 (see Figure 2 and column 2, line 68 through column 3, line 8).

In light of the foregoing, the appellant's argument that Woten's auger 18 does not perform the function required of the "first means" recited in claim 20 is not persuasive. Since such argument is the only one advanced by the appellant with respect to the standing 35 U.S.C. § 102(b) rejection of independent claim 20 and dependent claim 22, we shall sustain this rejection.

We shall also sustain the standing 35 U.S.C. § 103 rejection of dependent claim 21 as being unpatentable over Woten in view of Morris.

Claim 21 further defines the "first means" recited in parent claim 20 as comprising "a shaft having a plurality of spikes extending radially therefrom in a helical pattern". Although Woten's auger 18 does not meet this additional limitation, the examiner's reliance on Morris to cure the deficiency (see pages 5 and 6 in the answer) is well taken.

Morris discloses a general purpose material feeder adapted "to prevent caking or other adhesions of the material, whereby the material ceases to flow freely through the outlet" (page 1, lines 37 through 39). The feeder includes a plurality of shafts, each having an array of fingers or spikes extending therefrom in a spiral or helical pattern. The spiral or helical spike patterns serve to agitate the material and to convey it toward the center of the feeder (see page 1, line 105 through page 2, line 13).

The teachings of Morris relating to the agitating and conveying characteristics of rotating shafts having helical spike patterns would have furnished the artisan with ample motivation or suggestion to modify Woten's auger 18 by providing it with spikes as recited in claim 21 in order to enhance its agitating capability while retaining its conveying capability. The appellant's argument that "Morris does not provide the function

of conveying the insulation material in one direction in the housing toward the exit opening formed as required by claim 20 and hence claim 21" (brief, page 5, emphasis in the original) is not convincing. To begin with, such argument is not commensurate with the actual scope of claim 21 which does not exclude the first means from conveying the insulation material in more than one direction. Moreover, non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. In re Merck & Co., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Here, even if claim 21 did require the first means to convey the insulation material in but a single direction toward the exit opening, Woten's "first means" or auger 18 does the same and the provision of suitably arranged spikes thereon as suggested by Morris would not alter this feature.



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The decision of the examiner is affirmed.

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	
LAWRENCE J. STAAB	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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